

Rigid Plastic Packaging Container (RPPC) Rulemaking

Summary of Changes from
Informal Review Process

Interested Parties Meeting
October 30, 2007

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Need for Changes

Regulatory changes are needed to:

1. Incorporate recent statutory changes
2. Clarify key definitions
3. Improve certification processes
4. Improve overall readability and organization

Organizational Changes

- **Eliminated question and answer format**
- **Deleted obsolete definitions and language**
- **Reorganized the regulations to improve flow and readability**

Proposed Definitions - Postconsumer Material Section 17943(I)

- **Postindustrial material can no longer be credited to PCM use requirements**
 - **Consistent with definition of PCM in RPPC and Plastic Trash Bag minimum content statutory language.**

Proposed Definitions – Product Manufacturer (PM) Section 17943(n)

- **Producer or generator of the product offered for sale in CA**
- **Factors for identifying the PM**
 - **Ownership of the brand name**
 - **Primary control over product design**
 - **Primary control over container design**
- **Not a hierarchical list of factors**

Proposed Definitions – Reusable Container Section 17943(r)

- Reuse is to store a replacement product sold by the same manufacturer
- Replenishes the contents of the original RPPC
- Does not apply to an RPPC that permanently stores the original product

Proposed Definitions – RPPC

Section 17943(s)

- Capable of at least one closure
 - **Including manufacturing process**
- Includes metal or plastic handles and other non-plastic, incidental packaging elements
- Includes “relatively inflexible containers,” but not film packaging
 - **May be capable of being folded or collapsed**

Relatively Inflexible Finite Shape

Regulated



Inflexible



Regulated



Relatively Inflexible



**Not
Regulated**

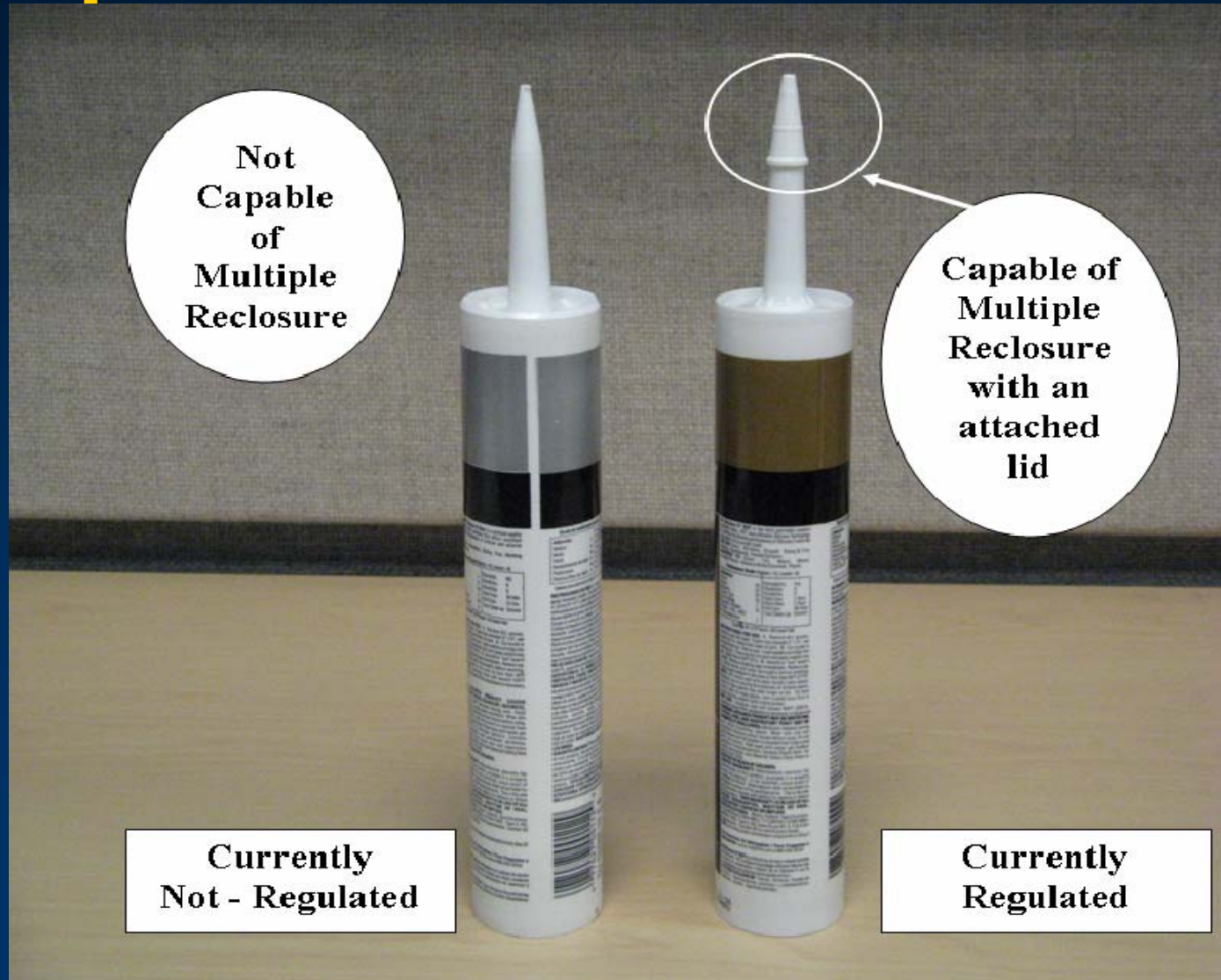


Flexible

Capable of at least one closure



Capable of at least one closure



Metal or Plastic Handle

Bucket with
an attached
Metal Handle

Bucket with
an attached
Plastic Handle

Currently
Not - Regulated

Currently
Regulated

Proposed Definitions – Source Reduced Container Section 17943(v)

- Deleted language based on obsolete statutory language
- Comparison of containers based on def. of Particular Type RPPC
- Clarified that “similar RPPCs” are alike in shape, volume, and concentration

Proposed Definitions – Source Reduced Container Section 17943(v)

- **Factors for approving source reduction through resin switching:**
 - **Comparison of recycling rate data for respective resin types**
 - **Availability of PCM for the respective resin types of appropriate quality for use in RPPCs**
 - **Information supplied by the manufacturer**
 - **Any other relevant sources of information**

Proposed Container Requirements

Section 17944

- **Postconsumer Content Compliance Option**
 - **Exempt containers - RPPCs statutorily exempt from this requirement under FDA and DOT rules must comply with another option under this section.**
 - **Non-exempt containers - If it is technologically infeasible for an RPPC to meet this requirement, that container must comply through another compliance option**
- **Clarified that the 45 percent recycling rate applies to the following:**
 - **product-associated RPPCs**
 - **particular-type RPPCs**
 - **single resin type RPPCs**

Alternative Container Compliance Methods - Section 17944.1

- **Statutory language added**
- **CaPCM used in other products or packaging may be credited toward the PCM content option:**
 - **Consumed directly by manufacturer**
 - **Under contractual agreement manufacturer arranged for the purchase, export and consumption of CaPCM outside of the state**

Who Must Certify Compliance with These Regulations - Section 17945

- **Section reorganized into discrete parts**
 - **17945: Deleted**
 - **17945.1: Pre-Certification Process**
 - **17945.2: Compliance Certifications**
 - Summarizes what PMs and CMs must report
 - **17945.3: PM Certification Information**
 - **17945.4: CM Certification Information**
 - **17945.5: Compliance Calculations**

Proposed Pre-Certification Process Section 17945.1

- **Maintain a pool of companies to certify**
- **Newly identified companies will be notified that they have been added to the pool of regulated companies**
 - **Company submits contact information**
 - **May also submit documentation that it is not regulated**

Proposed Pre-Certification Process Section 17945.1 (Continued)

- **Selection hierarchy for companies in the pool for certification**
 - **Non-compliant from previous certification**
 - **Random selection of companies not previously required to certify**
 - **Random selection of companies that have previously certified compliance**
- **Selected companies shall be notified by March 1st of the measurement period**

Proposed Certification Timeline

Section 17945.1

RPPC PROGRAM CERTIFICATION CYCLE				
TASK NAME	Prior	Year 1	Year 2	Year 3
Rulemaking & Outreach				
Adoption of Regulations	X			
Education and Outreach		Ongoing		
Effective Date of Regulations	X			
Pre-Certification Process				
Notify newly identified companies		X		
Remove if verified as not regulated				
Certification Process				
Notification of "small pool" of 125 companies			X	
Container Determinations & Resolve Issues				
Certification Notice - 100 companies			X	
Certifications Due				X
Enforcement Process				
Certification Review				
Incomplete Certification Notice				X
Enforcement				

Proposed Compliance Certifications Section 17945.2(f)

- **Clarified that the Board may request information from a product manufacturer outside of any notice of incomplete certification**
 - **Request shall be in writing**
 - **The product manufacturer shall have 60 days to supply the information**

Product Manufacturer (PM) Certification Information- Section 17945.3

- **No significant changes**

Container Manufacturer Certification Information Section 17945.4

No significant revisions

Proposed Compliance Calculation and Formulas Section 17945.5

Compliance Option for use of CaPCM

$$\begin{array}{l} \text{Alternative} \\ \text{Compliance} \\ \text{Calculation} \end{array} = \frac{(\Sigma \text{PCM}_{\text{RPPC}} + \Sigma \text{PCM}_{\text{OP\&P}})}{\text{Total Gram Weight of all RPPCs}} \times 100 > 25.00\%$$

Waivers

Section 17946

- **12-month waiver for newly-introduced products**
- **PCM addressed in Section 17944(a)(1)(A)**

Exempt RPPCs/FIFRA and Hazmat Section 17946.5 (a) (3) & (4)

- **Product manufacturer shall submit to the Board a written request containing:**
 - **Citation to applicable federal regulations**
 - **Pesticide registration numbers, if any**
 - **Material Safety Data Sheets**
 - **Other documentation as needed to support the exemption claim**

Auditing Section 17947

No significant revisions

Proprietary, Confidential, or Trade Secret Information Section 17948

- **All records claimed as confidential shall:**
 - **be subject to the disclosure provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4**
- **Duplicative language removed**

Proposed Retention of Records

Section 17948.1

- **Documentation shall be retained and available at the request of the Board for at least three (3) years**
 - **Reduced from 4 years in current reg.**

Proposed Advisory Opinions

Section 17948.2

- **Establishes new process for a manufacturer to request advisory opinions from the Executive Director regarding its compliance status**
 - **Requests can only be submitted after receiving a notice from the Board (March 1st) that the company may be required to demonstrate compliance for that measurement period**
 - **Requests must be submitted in writing within 60 days of receiving the Board notice**
 - **Executive Director must issue an opinion within 45 days of receiving the request**

Proposed Advisory Opinions

Section 17948.2 (Continued)

- **Advisory opinions cannot be appealed through an administrative hearing**
- **Upon receipt of a certification package, the manufacturer may choose to follow the advisory opinion at its discretion**
- **If disputes are unresolved during the certification process, the Board may schedule a hearing before an Administrative Law Judge (ALJ)**
 - **Board must ratify ALJ decisions**

Violations and Penalties

Section 17949

- **Added formulas for calculating compliance points**
- **Included penalty calculation example**
- **Added “good faith efforts” to factors for modifying penalties**

Conclusion

Proposed changes will:

- Align RPPC regulations with new and existing statute and Board policy
 - **Key definitions**
 - **CaPCM compliance options**
- “Levels the playing field” by eliminating inconsistencies in the existing regulations

Conclusion

The changes will help to:

- **Divert RPPCs from disposal**
- **Support markets for postconsumer material**
- **Promote producer responsibility**

Conclusion

And finally....

CIWMB staff believe these changes will significantly increase the efficiency and effectiveness of the law.



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